Patent Litigation by the Numbers

Professor Colleen Chien
colleenchien@gmail.com
“It’s a Fan!”

“It’s a Spear!”

“It’s a Wall!”

“It’s a Rope!”

“It’s a Snake!”

“It’s a Tree!”
Legal Perspective
$12.5 Billion
Google Buys

Motorola Mobility

For US $12.5 Billion
Google's 2010 Revenue $29B

Annual Android Revenue (est) $2.5B
Google’s 2010 Revenue: $29B
Annual Android Revenue (est): $2.5B
Google’s 2010 Revenue $29B

Annual Android Revenue (est) $2.5B

$12.5 Billion
10+
10+

Ways to show the smartphone wars

MOBILE PATENT SUITS

Patent-related suits between mobile device/ component manufacturers

Amazon  Apple  Barnes & Noble  Ericsson  Foxconn

Qualcomm  RIM  Samsung  Sony  ZTE

Google  HTC  Huawei  Inventec  Kodak  LG

*Utilizes Google’s Android OS

Cases resolved

Suing  Suing each other  Licensed technology to company

Source: Reuters, news reports

*Kodak’s separate suit against Apple will be decided on Aug 30.
Motorola Patent Litigation Since 2010

 Lawsuits and patent related complaints by and against

**Companies Litigating Against Motorola**

- **Microsoft vs. Motorola**, Files ITC complaint, Oct 1, 2010
- **Gemalto vs. Motorola**, Along with HTC, Google, Samsung, Oct 22, 2010
- **Apple vs. Motorola**, For violating six patents, Oct 30, 2010
- **Microsoft vs. Motorola**, For patent license royalties, Nov 9, 2010
- **Micrometry Systems Engineering vs. Motorola**, Along with Apple, microprocessor patents, Jan 27, 2011
- **Lodsys vs. Motorola**, Along with Motorola Mobility, IP infringement, Feb 11, 2011
- **Ogma vs. Motorola**, Along with Apple, patent infringement, Mar 14, 2011
- **Imperium Holdings vs. Motorola**, Along with 7 others, patent infringement, Mar 21, 2011
- **Ogma vs. Motorola**, Along with others files ITC complaint, Apr 1, 2011
- **Gellyfish Technology vs. Motorola**, Along with Motorola Mobility and 30 others, IP infringement, Apr 13, 2011
- **Hybrid Audio vs. Motorola**, Along with Apple, HTC, Dell, patent infringement, Apr 19, 2011
- **Apple vs. Motorola**, Design patent infringement in Germany over Xoom, May 27, 2011
- **Qazax LLC vs. Motorola**, and others, patent infringement, Jun 2, 2011
- **Cascades Computer Innovation vs. Motorola**, Along with Motorola Mobility and Samsung, patent infringement, Jul 6, 2011
- **Multi-Format vs. Motorola Mobility**, and others, patent infringement, Jul 28, 2011
- **Advanced Digital Technologies vs. Motorola**, Along with Motorola Mobility and Dell, patent infringement, Aug 1, 2011

**Companies Motorola’s Litigating Against**

- **Motorola vs. Apple**, Files ITC complaint, Jan 22, 2010
- **Motorola vs. Microsoft**, Patent infringements found in Xbox, Nov 11, 2010
- **Motorola vs. Microsoft**, Files ITC complaint, Nov 22, 2010
- **Motorola vs. TiVo**, Patent infringement, Feb 11, 2011
- **Motorola vs. Apple**, Patent infringement in Germany, Apr 2011
# The Mobile Patent Mess

## Who’s Suing Who?

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<th>amazon.com</th>
<th>BARNES &amp; NOBLE</th>
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### What the Icons Mean:

- 🔺 Company in row is suing company in column
- 🔻 Company in column is suing company in row
- 🔺🔺 Both companies are suing each other
- 🔺 حت Company in row has licensed technology to company in column rather than suing (or after settlement)
- 🔻🔺 Company in column has licensed technology to company in row rather than suing (or after settlement)
- 😊 Hardware and software companies that collaborate on devices
- 😞(BigDecimal) Companies are sparring through indirect partner suits
Who's suing who in the mobile business

Microsoft has licensed patents to HTC; no lawsuit is in process.
ANDROID-RELATED LITIGATION SINCE 2010

Device makers under pressure to address Android’s IP infringement

http://fosspatents.blogspot.com  Twitter: @FOSSPatents

*There are multiple Android-related lawsuits between these parties, and the date above is the date upon which the first suit was filed.*
MO’ PATENTS, MO’ PROBLEMS: THE PATENT LAWSUIT ECONOMY

Number of Patents in Litigation 2008

2,602

= 10 Patent Litigations

OF THE PATENTS LITIGATED IN 2008...

- The long-term win rate for patent owners is 25%
- Only 14% of patent litigations are adjudicated
- Half of those are adjudicated on summary judgement

Patent litigation is when an inventor or other practicing entity owns a patent, and that patent is infringed upon by a third party. Patent litigation is usually a lengthy, drawn-out process that can cost both parties a significant amount of money.
Average Patent Litigation Costs

- **LESS THAN $1 MILLION AT RISK**
  - End of discovery: $350,000
  - Through deposition: $600,000

- **BETWEEN $1 MILLION AND $250 MILLION AT RISK**
  - End of discovery: $1,250,000
  - Through deposition: $2,500,000

- **GREATER THAN $250 MILLION AT RISK**
  - End of discovery: $3,000,000
  - Through deposition: $6,000,000

COSTS INCLUDE:
- ATTORNEY FEES
- PRODUCTION COSTS
- DOCUMENT MANAGEMENT
- TRAVEL EXPENSES
- WITNESS FEES

IF ALL PATENT LITIGATIONS WERE ADJUDICATED IN 2008

THE TOTAL COST WOULD HAVE BEEN

$31,224,000,000

Average Damage Awards

- **PRACTICING ENTITIES**
  - Per litigation: $3.4 MILLION
- **NON-PRACTICING ENTITIES**
  - Per litigation: $12 MILLION

PATENT TROLLS

A NPE or Non-Practicing Entity is sometimes referred to as a Patent Troll. Patent trolls are companies that acquire patents and seek payment from companies they claim are infringing on their patents.

NPE'S have a 67% trial success rate
Patent Litigation Timeline

Most patent litigation lawyers are based on an hourly basis. This can rise to astronomical costs when considering how long a patent litigation suit takes.

COMPLAINT ANSWER | CMC | FACT DISCOVERY | CLAIM CONSTRUCTION | EXPERT DISCOVERY | PRE-TRIAL | TRIAL | APPEAL

---|---|---|---|---|---|---|---
2-3 MONTHS | 1 MONTH | 9 MONTHS | 2 MONTHS | 2-3 MONTHS | 1-2 MONTHS | 1 MONTH | 2-4 MONTHS

Lawsuit is filed, summons are issued. | Case Management Conference | Parties exchange initial disclosures and documents. Depositions occur. | Parties exchange claim terms and work to compromise | Exchange of lists and motions, statements drafted. | Expert witnesses, expert reports and rebuttals | Jury selection, testimonies and closing statements | Filed 30 days after judgement

Plaintiffs and defendants have the right to appeal decision made by the court. This appeal process is costly and time consuming.

Cost of an Appellate Trial:
The cost of an appellate trial can raise the cost of patent litigation from $3 Million to $5 Million dollars on average.

15% of patent infringement cases went to appeal.

40% of judgements are favorable to

15% are unfavorable
LAWSUITS IN THE MOBILE BUSINESS
(19%)

(28%)
Chien, 2009

- **Defendant Size**
  - PAE (19%)
  - Individual Inventor (4%)
  - Small v. Large (18%)

- **Plaintiff Size**
  - Sport of Kings Suits (28%)
  - Limited Stakes (16%)
  - Predation/Bullying (8%)
15%
New Law Creates a Demand for Patent Specialists

By BLOOMBERG NEWS
Published: October 9, 2011

Patent lawyers are in such demand that their specialty may account for more than 15 percent of law firm job openings while representing just 3 percent of lawyers in the United States.
Consumer Perspective
Available on Amazon.com

3

20+
Available on Amazon.com

3  iPhone models

20+  Android devices
Available iPhone Apps: 500,000 +
Available Android Apps: 299,290
Available iPhone Apps: 500,000 +
Available Android Apps: 299,290
Google's Desired Price: Free

Handset maker estimate: $60
Price of Android

Google’s Desired Price: Free

Android Handset maker est
Royalties: $60

- IAM Blog 10/2011
0% and 26%
0% and 26%: The percentage of iPhone components Apple makes; the percentage of iPhone components Samsung supplies, respectively

- The Economist, Aug 2011
Investor Perspective
At least 380

At least 14
At least 380 – NPEs tracked by Patent Freedom

At least 14 – publicly-traded NPEs
48 : number of employees of Acacia
As a result of the common reluctance of patent infringers to negotiate and ultimately take a patent license for the use of third-party patented technologies without at least the threat of legal action, patent licensing and enforcement often begins with the filing of patent enforcement litigation.
300+ : lawsuits brought by Acacia

“As a result of the common reluctance of patent infringers to negotiate and ultimately take a patent license for the use of third-party patented technologies without at least the threat of legal action, patent licensing and enforcement often begins with the filing of patent enforcement litigation.”

ACTG 10-K (Dec 2010)
1000%
1000% Growth in ACTG 2008-Present ($3.50 → $33)
### Cost of Revenues and Net Income Attributable to Noncontrolling Interests (In thousands)

<table>
<thead>
<tr>
<th>Cost of revenues:</th>
<th>2010</th>
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<tbody>
<tr>
<td>Inventor royalties</td>
<td>$25,292</td>
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<tr>
<td>Contingent legal fees</td>
<td>19,906</td>
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<tr>
<td>Litigation and licensing expenses - patents</td>
<td>13,891</td>
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<td>Amortization of patents</td>
<td>6,931</td>
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<tr>
<td>Net income attributable to noncontrolling interests</td>
<td>(2,965)</td>
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38%  
50%
38% - the share of revenue costs Acacia gives back to inventors

50% - the share of revenue costs Acacia spends on lawyers
universities that are investors in Intellectual Ventures technology companies that are investors in Intellectual Ventures
10: universities that are investors in Intellectual Ventures

18: technology companies that are investors in Intellectual Ventures
Public Interest Perspective
$500B
$500B – the private and social cost attributed to trolling – Bessen and Meurer 9/2011
# of products and features that litigation has prevented from being developed

# of products and features that proceeds from patent litigation has enabled

# of companies that have had to change their business model or close up shop due to litigation

# of companies that have been able to keep the lights on using revenue generated by patent litigation
? # of products and features that patent litigation has prevented from being developed

? # of products and features that proceeds from patent litigation has enabled

? # of companies that have had to change their business model or close up shop due to litigation

? # of companies that have been able to keep the lights on using revenue generated by patent litigation
patent pending
junk mail instant shredder